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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JOE ARROYO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

TP-LINK USA CORPORATION, a
California corporation, and TP-LINK
TECHNOLOGIES CO., LTD., a Chinese
corporation,

Defendants.

CASE NO.: 2:16-cv-01044-PA-KKx

**TP-LINK USA CORPORATION'S
OBJECTION TO APPLICATION
OF ARI SCHARG TO APPEAR
PRO HAC VICE [DKT. 119];
REQUEST FOR SANCTIONS [L.R.
83-7]**

[Filed concurrently with Declaration of
Timothy Fox]

1 **I. Introduction**

2 TP-LINK USA Corporation (“TP-LINK USA”) objects to the Application of
3 Ari Scharg, a partner at Edelson PC (“Edelson”), to appear in this Court *pro hac*
4 *vice*. Dkt. 119. Mr. Scharg and Edelson have attempted to make an end-run
5 around the Local Rules governing *pro hac vice* applications in this Court and other
6 California district courts and should be sanctioned to stop this behavior.

7 Mr. Scharg’s Application for *pro hac vice* should be denied for at least three
8 reasons. First, Mr. Scharg has not associated with local counsel who resides in this
9 District as required by the Local Rules. Rather, for local counsel Mr. Scharg listed
10 the name of Edelson’s San Francisco based associate, Todd Logan, and the address
11 of a “virtual office” at a Regus Business Center in Los Angeles. Hence, Edelson
12 fails to meet the requirements that it has local counsel who practices in and has a
13 bona fide office in this District.

14 Second, both Mr. Scharg and his firm Edelson engage in systematic and
15 regular business in California, which disqualifies him and any Edelson attorney
16 from *pro hac vice* admission to this Court. Edelson maintains an office in San
17 Francisco and since 2009 has been involved in ***at least 97 cases*** in California,
18 including ***27 cases*** in the Central District. Since 2011, Mr. Scharg has been
19 involved in ***at least 17 cases*** in California, including ***10 cases*** in the Central
20 District. Mr. Scharg was admitted *pro hac vice* to this District ***in 9 of these 10***
21 ***cases***.

22 Third, Mr. Scharg’s *pro hac vice* Application failed to comply with this
23 Court’s order, is untimely, and should be denied on this basis alone. Mr. Scharg’s
24 application is also inaccurate as it omitted that he was admitted *pro hac vice* in this
25 District less than a month ago.

26 As shown by the numerous *pro hac vice* applications filed in this case and in
27 this District, the attorneys at Edelson are well aware that they cannot meet the *pro*
28 *hac vice* rules for this District and have attempted to deceive the Court in order to
obtain admission. The Court should deny Mr. Scharg’s *pro hac vice* application

1 and impose sanctions against Mr. Scharg and Edelson for their ongoing and blatant
2 disregard for the *pro hac vice* requirements of this and other districts.

3 **II. Legal Standard**

4 The Local Rules for the Central District of California (“Local Rules”) govern
5 who may appear before the Court *pro hac vice*. Local Rule 83-2.1.3.1 provides
6 that:

7 An attorney who is not a member of the State Bar of California may
8 apply for permission to appear *pro hac vice* in a particular case in this
9 Court if the attorney:

- 10 (a) is a member in good standing of, and eligible to practice
- 11 before, the bar of any United States Court, or of the highest
- 12 court of any State, Territory, or Insular Possession of the United
- 13 States;
- 14 (b) is of good moral character;
- 15 (c) has been retained to appear before this Court; and
- 16 (d) is not disqualified under L.R. 83-2.1.3.2.

17 While Local Rule 83-2.1.3.2 disqualifies any attorney who:

- 18 (a) resides in California;
- 19 (b) is regularly employed in California; or
- 20 (c) is regularly engaged in business, professional, or other similar
- 21 activities in California.

22 Local counsel is also required for any attorney seeking to appear *pro hac*
23 *vice* and must be an attorney who “(1) is a member of the Bar of this Court; and (2)
24 maintains an office within the District.” L.R. 83-2.1.3.4.

25 Local Rule 83-7 permits sanctions for the violation of or failure to conform
26 to any of these Local Rules and the Court may subject the offending party or
27 counsel to:

- 28 (a) monetary sanctions, if the Court finds that the conduct was
willful, grossly negligent, or reckless;

1 [and/or]

2 (c) for any of the conduct specified in (a) . . . above, such
3 other sanctions as the Court may deem appropriate under the
4 circumstances.

5 **III. Argument**

6 **a. Mr. Scharg Lacks Bona Fide Local Counsel**

7 Mr. Scharg lists as his local counsel for his *pro hac vice* application Todd
8 Logan with an office address located at 555 W. Fifth St. 31st Floor, Los Angeles,
9 CA 90013. Dkt. 119. However, the truth is that Mr. Logan is a first year associate
10 who works out of Edelson’s San Francisco office.¹ Mr. Logan does not operate out
11 of or maintain an office in the Central District of California. To the contrary, the
12 address listed for Mr. Logan on Mr. Scharg’s Application is actually a “Regus
13 Business Center” in which Edelson apparently maintains a “virtual office” for the
14 purpose of procuring deceptive *pro hac vice* admissions.²

15 To confirm this, the Court need look no further than Edelson’s prior *pro hac*
16 *vice* conduct with this Court. On February 16, 2016, following the transfer of this
17 case, the Court ordered the four Edelson attorneys previously admitted *pro hac*
18 *vice* in the Northern District to file *pro hac vice* applications within 30 days.³ Dkts.
19 97, 98, 99, 100. On March 15, 2016, only one of these four attorneys, Alexander

21 ¹ The State Bar of California reports Mr. Logan as working out of Edelson’s San
22 Francisco office. <http://members.calbar.ca.gov/fal/Member/Detail/305912> (attached to
23 Declaration of Timothy Fox as Exhibit D). While Mr. Logan’s firm profile confirms the
24 same. <http://www.edelson.com/team/todd-logan/> (attached to Declaration of Timothy
25 Fox as Exhibit E). In fact, Edelson’s most recent filing with this Court—Notice of Non-
Opposition to a Motion to Dismiss—lists Mr. Logan’s address as Edelson’s San
Francisco office. Dkt. 120 at pg. 2 (signature block for Mr. Logan).

26 ² <http://www.regus.com/us/business-center/california/los-angeles/gas-company-tower>
27 (attached to Declaration of Timothy Fox as Exhibit F).

28 ³ A review of the Northern District *pro hac vice* rules draws similar concerns about the
numerous *pro hac vice* applications filed by Edelson attorneys in that District.

1 Nguyen, filed a *pro hac vice* application.⁴ Dkt. 114. Like Mr. Scharg, Mr. Nguyen
2 listed Todd Logan as local counsel in his application. *Id.* However, Mr. Nguyen
3 listed Mr. Logan’s actual office—San Francisco—on his application. *Id.*
4 Accordingly, the Clerk struck Mr. Nguyen’s application as his local counsel did
5 not reside in the Central District, and ordered Mr. Nguyen to correct the
6 deficiencies by March 23. Dkts. 116, 118.

7 Presumably realizing that the Clerk would compare any revised application
8 of Mr. Nguyen with his prior application that was struck, Edelson has not filed a
9 new *pro hac vice* application for Mr. Nguyen, but instead decided to try again with
10 another Edelson partner, Mr. Scharg in the apparent hope the Clerk would not
11 realize that Mr. Logan had miraculously relocated 400 miles and opened his own
12 office in less than three days. Dkt. 119.

13 Even assuming that Mr. Logan did actually move 400 miles to Los Angeles,
14 a “virtual office” at the Regus Business Center is not sufficient to qualify as local
15 counsel. “[A] bona fide office is more than a mere address—it is a functioning
16 office. [Citation]. Mere rented office space lacks any of the indicia of office
17 location, including where clients are met, where files are kept, where telephones
18 are answered, where mail is received, and where counsel can be reached during
19 business hours. [Citation].” *Moreno v. Autozone, Inc.*, No. 05-cv-04432-MJL,
20 2007 WL 4287517, *11 (N.D. Cal. 2007) (citations omitted). Indeed, Edelson’s
21 website does not list an office in Los Angeles, but only offices in Chicago and San
22 Francisco, which further bolsters that the Los Angeles “virtual office” is not a bona
23 fide Edelson office. Fox Decl., Exh. G.

24 Notably, this is not the first time that Edelson has engaged in deceptive
25 conduct in order to procure admission to the Central District. Only last month,
26 Edelson used the exact same tactic of claiming Mr. Logan operated out of the

27 _____
28 ⁴ This lack of compliance is especially galling as the Court warned each of the attorneys
that failure to comply within 30 days would subject the attorneys to sanctions. Dkt. Nos.
97-100.

“virtual office” at the Regus Business Center to obtain *pro hac vice* admission for Mr. Scharg. *See Tyacke v. First Tennessee Bank, N.A.*, No. 5:16-cv-00228-JGB, Dkts. 10, 11 (attached to the Declaration of Timothy Fox as Exhibit A).

b. Mr. Scharg and Edelson PC Regularly Engage In Business in California

Mr. Scharg’s Application should also be denied for the independent reason that he and Edelson regularly engage in business in California in at least three ways. First, Mr. Scharg is a partner at a law firm that maintains and operates an office based in San Francisco, California.⁵ Where an attorney is a partner in a firm with an office in California, this constitutes being “regularly employed” or “engaged in business” in California. *See Taylor v. Chiang*, No. 01-cv-2407-JAM, 2009 WL 453050, *6 (E.D. Cal. Feb. 23, 2009) report and recommendation adopted sub nom, *Taylor v. Chiang*, No. 01-cv-2407-JAM, 2009 WL 1119390 (E.D. Cal. Apr. 24, 2009) *aff’d sub nom. Taylor v. John Chiang*, 405 F. App’x 167 (9th Cir. 2010).

Second, Mr. Scharg’s firm, Edelson, has been involved in *at least 97 cases* in district courts in California since 2009.⁶ Declaration of Timothy Fox (“Fox Decl”), ¶ 3, Exh. B. This is sufficient to constitute regularly engaged in business in California.

Third, an attorney is considered to be regularly engaged in business in California if he has appeared *pro hac vice* in the state multiple times. *Mendoza v. Golden W. Sav. Ass’n Services Co.*, No. 09-cv-1200-GAF, 2009 WL 2050486 (C.D. Cal. July 7, 2009) (regular practice disqualifies counsel from *pro hac vice* admission). Courts have held that regular practice can consist of as few as two

⁵ See <http://www.edelson.com/contact/> listing two offices in San Francisco and Chicago (attached to the Declaration of Timothy Fox as Exhibit G).

⁶ This number is likely higher as it does not include any California state court cases and was calculated based only on a search for cases involving a few current partners at Edelson. Fox Decl., ¶ 3.

cases within four months⁷, three cases in the last three years⁸, four cases over the last four years⁹, and five cases in three years¹⁰.

Here, since 2011 Mr. Scharg has appeared *in at least 10 cases* in this District (excluding this action) and obtained *pro hac vice* admissions in 9 of these 10 cases, including obtaining *pro hac vice* admission before Judge Bernal as recently as February 2016. Fox Decl., ¶¶ 2-3, Exhs. A, B. When the search is broadened to include all districts in this state, Mr. Scharg has appeared in or filed *pro hac vice* applications *in at least 17 cases* since 2009, with another *pro hac vice* application granted just last month in the Northern District. Fox Decl., ¶¶ 3-4, Exhs. B, C. Notably in this recently filed Northern District application, Mr. Scharg again lists Mr. Logan as his local counsel, but Mr. Logan's address is Edelson's office in San Francisco. Fox Decl., Exh. C.

c. Mr. Scharg's Application is Untimely Per This Court's Order and is Inaccurate

On February 16, 2016, the Court ordered Mr. Scharg to file a *pro hac vice* application by March 17, 2016 or be subject to sanctions. Dkt. 99. Mr. Scharg did not file his application until March 18, 2016. Dkt. 119. Mr. Scharg's untimely Application should be denied on this basis alone.

Moreover, the Application filed by Mr. Scharg was inaccurate. Mr. Scharg omitted from his Application that he has sought and obtained *pro hac vice*

⁷ *Dupont Realty Corp. v. Evonik Degussa Corp.*, No. 09-cv-1896-SLT, 2009 WL 1708757 (E.D.N.Y. June 17, 2009).

⁸ *Spirit Locker, Inc. v. Evo Direct, LLC*, No. 09-cv-1582-JG, 2009 WL 1449062 (E.D.N.Y. May 22, 2009).

⁹ *Pangborn v. Metlife, Inc.*, No. 09-cv-0976-DGT, 2009 WL 1617679 (E.D.N.Y. June 9, 2009).

¹⁰ *Guguni v. Chertoff*, No. 08-cv-1850-JL, 2008 WL 2080788, *1 (N.D. Cal. May 14, 2008)

admission in the Central District at least once in the past three years. *See Scott Tyacke v. First Tennessee Bank N A*, No. 5:16-cv-00228-JGB, Dkt. 11 (attached to the Declaration of Timothy Fox as Exhibit A).¹¹

d. Mr. Scharg and Edelson Should Be Sanctioned per L.R. 83-7 for Knowingly Violating This Court's *Pro Hac Vice* Requirements

Edelson attorneys have repeatedly flaunted this Court's and other district courts' in this state *pro hac vice* requirements. The Court is empowered to sanction such conduct to deter it from occurring again. Local Rule 83-7. TP-LINK USA requests that the Court award as monetary sanctions \$2,600, the amount TP-LINK USA incurred in researching and drafting this objection. Fox Decl., ¶ 9.

TP-LINK USA also requests that the Court order that Mr. Logan be the only associate allowed to appear in this and any other action pending in this District and that only Mr. Logan be allowed to perform substantive work, including hearings, drafting all filings and correspondence, and specifically prohibiting any ghostwriting or other assistance from attorneys not admitted in this state. The Court is empowered to enter such an order in order to prevent the unauthorized practice of law in this state. *See Taylor*, 2009 WL 453050, at *3.

IV. Conclusion

Based on the foregoing, TP-LINK USA objects to Ari Scharg's application for approval to appear *pro hac vice*. TP-LINK USA also asks the Court to sanction Mr. Scharg and Edelson for their ongoing violation of the *pro hac vice* requirements in this and other district courts.

¹¹ Curiously, Mr. Scharg's signature on his application a month ago is markedly different from his signature on the *pro hac vice* application he filed in this case. Compare Dkt. 119 with Fox Decl., Exh. A.

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Dated: March 20, 2016

Respectfully submitted,

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